

Farm Service Agency, USDA

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§ 711.24 Service of determination.

A copy of the determination, certified by the clerk as a true and correct copy of the signed original, shall be served upon the applicant by sending the same by certified mail addressed to the applicant at his last known address. The copy of the determination shall contain at the top thereof substantially the following statement: "To all persons who, as operator, landlord, tenant, or sharecropper, are or will be interested in the above-named commodity on the farm identified below in the year for which the marketing quota being reviewed is established" and such statement shall constitute notice to all such persons. The clerk shall make a notation on the original determination of the date and place of such mailing. The clerk forthwith shall forward two copies of such determination to the State office, and one copy to the county committee. The determination of the review committee does not become final until the period for reopening of hearing under § 711.25 has expired without any reopening; or if reopened thereunder, such determination becomes final upon issuance of a new determination pursuant to the reopened hearing, subject to further appeal to a court by the applicant.

§ 711.25 Reopening of hearing.

(a) *Upon motion of review committee.* Upon its own motion within 15 days from the date of mailing to the applicant of a copy of the determination of the review committee, the review committee may reopen a hearing for the purpose of taking additional evidence or of adding any relevant matter or document.

(b) *Upon written request based on new evidence.* Upon written request by the applicant, the county committee, the State executive director, or other interested parties, to the review committee within 15 days from the date of mailing to the applicant of a copy of the determination of the review committee, the review committee shall reopen the hearing for the purpose of taking additional evidence or of adding any relevant matter or document if the review committee finds that such evidence or documents constitute new evi-

dence not available to the parties at the time of the hearing.

(c) *Upon written notice by the Secretary.* Upon written notice by the Secretary or on his behalf by the Deputy Administrator to the review committee within 45 days from the date of mailing to the applicant of a copy of the determination of the review committee on Form MQ-58, the hearing shall be deemed reopened and the State executive director shall schedule the reopened hearing.

(d) *Schedule of reopened hearing.* Schedule of and notice of any reopened hearing shall follow the requirements of §§ 711.18 and 711.19 insofar as practicable. Notwithstanding the provisions of paragraphs (a), (b), and (c) of this section, no hearing shall be reopened after an appeal to a court pursuant to section 365 of the act has been timely filed by the applicant. No special hearing to contest a reopening of a hearing shall be scheduled; however, the applicant may present evidence and arguments to contest the reopening when the reopened hearing is held.

§ 711.26 Record of hearing.

The record of the proceedings shall be prepared by the clerk and shall consist of the following:

(a) All procedural documents in the case under review, including the application and written notices of quota and hearing and any other written notice in connection with the application.

(b) Copies of regulations presented at the hearing.

(c) The answer of the county committee or the State executive director.

(d) The summary of the proceedings and the testimony prepared by the review committee if a verbatim transcript is not made, or a transcript of the testimony where a verbatim transcript is made, in accordance with § 711.21(f), to which shall be annexed any documentary evidence received at the hearing.

(e) Any written arguments or proposed findings of fact and conclusions filed in connection with the hearing.

(f) The written determination of the review committee.

(g) A list of all papers included in the record and a certificate by the clerk

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stating that such record is true, correct and complete.

COURT PROCEEDINGS

§711.27 Procedure in the case of court proceedings.

Upon the institution of any suit against the review committee for the purpose of reviewing its determination upon any application for review, the review committee is required by section 365 of the Act to certify and file in court a transcript of the record upon which the determination was made, together with the findings of fact made by the review committee. Any suit for review is required to be instituted by the applicant within 15 days after a notice of the review committee's determination is mailed to him. Such suit may be instituted in the U.S. District Court or in any court of record of the State having general jurisdiction, sitting in the county of the district in which the applicant's farm is located. The bill of complaint in such proceeding may be served by delivering a copy thereof to any member of the review committee. Any member of the review committee served with papers in such suit shall immediately forward such papers to the clerk. No member of the review committee shall appear or permit any appearance in his behalf or in behalf of the review committee, or take any action in respect to the defense of such suit, except in accordance with the instructions from the Deputy Administrator.

PUERTO RICO

§711.28 Special provisions applicable to Puerto Rico.

Notwithstanding the provisions of §§711.1 to 711.50, the Caribbean Area Agricultural Stabilization and Conservation Committee (hereinafter referred to as the "ASC Committee") shall perform, insofar as applicable, the duties and assume such responsibilities and be subject to the limitations as are otherwise required of State and county committees except as provided herein. The Director, Caribbean Area FSA office, shall recommend members of the review committee panel, the areas of venue, and perform the functions of the State executive director.

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Any farmer who is eligible to vote in a referendum for which a quota has been proclaimed shall be eligible for appointment as a member of a review committee panel. The clerk shall be the ASC district supervisor of the district in which the review committee will hold its hearings. Where it is impractical or impossible to use the United States mail to serve the applicant with notice of hearing or determination, use shall be made of such other method of service as is available. However, when such other method is used, the ASC Committee shall make provision for keeping an accurate record of the date and method of delivery to the applicant.

OMB CONTROL NUMBERS

§711.29 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in these regulations (7 CFR part 711) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of the 44 U.S.C. Chapter 35 and have been assigned OMB control number 0560-0068.

[49 FR 38240, Sept. 28, 1984]

PART 714—REFUNDS OF PENALTIES ERRONEOUSLY, ILLEGALLY, OR WRONGFULLY COLLECTED

Sec.

- 714.35 Basis, purpose, and applicability.
- 714.36 Definitions.
- 714.37 Instructions and forms.
- 714.38 Who may claim refund.
- 714.39 Manner of filing.
- 714.40 Time of filing.
- 714.41 Statement of claim.
- 714.42 Designation of trustee.
- 714.43 Recommendation by county committee.
- 714.44 Recommendation by State committee.
- 714.45 Approval by Deputy Administrator.
- 714.46 Certification for payment.

AUTHORITY: Secs. 372, 375, 52 Stat. 65, as amended, 66, as amended; 7 U.S.C. 1372, 1375.

SOURCE: 35 FR 12098, July 29, 1970, unless otherwise noted.